IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7635 OF 2006

Shivaji Daji Shelar. .. Petitioner.

vs.

Domenik George Gomes . .. Respondent.

Mr. K.P. Ravi for petitioner.

Mr. C. Krishnarao for Respondent.

CORAM : A.P. DESHPANDE, J.

DATE : 28th November, 2006.

P.C.

. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of the parties.

2. This petition is filed by the defendant against whom a summary suit has been filed. The plaintiff took out summons for judgement in a suit wherein the claim is for the sum of Rs. 30,000/- The plaintiff has relied upon a document indicating that the defendant has borrowed the amount and has agreed to pay interest at the rate of 9%. The said document is written on a stamp paper. The date of purchase of the stamp paper is 16.3.2001 whereas the

document mentions receipt of the amount on the date of execution of the document which is dated 10.3.2001. The defendant had denied the execution of the document and the transaction in question and had prayed for leave to defend. Though the trial Court observed that the question of veracity of such writing could be scrutinized on the basis of evidence which will be adduced by both the parties at the time of trial and after observing that it appears that triable issue is involved in the suit it proceeded to grant conditional leave. The condition is for deposit of a sum of Rs. 30,000/- within a stipulated period. This condition imposed while granting leave to defendant is the subject matter of challenge in the present petition.

3. The learned counsel for the petitioner/defendant submits that once the Court holds that a triable issue is involved in a suit, then, leave to defend ought to have been granted unconditionally. He places reliance on the judgment of the Supreme Court reported in AIR 1977 SC 577. In the said judgment the Supreme Court has laid down the principles to be followed while considering a question of granting leave to defend. The learned counsel for the petitioner is placing reliance on the said principles for contending that if a triable issue is raised, then unconditional leave need to be granted.

. It is next submitted by the learned counsel for the petitioner that the defendant is not in a position to deposit the sum of Rs. 30,000/- as directed by the trial Court and hence imposing the condition would deprive the defendant/petitioner of right to contest the suit on merits. Thus, it is contended that insisting to comply with the condition may result in miscarriage of justice. In all fairness, the learned counsel for the petitioner states that the petitioner will deposit the sum of Rs. 15000/- instead of Rs. 30000/- as directed by the trial Court within the period of three weeks from today. The learned counsel for the respondent/plaintiff submits that the discretion exercised by the trial court ought not to be interfered with in the exercise of jurisdiction under Article 227 of the Constitution of India and supports the order passed by the trial Court.

4. Having regard to the totality of the facts and circumstances, in my opinion, ends of justice would be met by directing the petitioner/defendant to deposit a sum of Rs. 15000/- instead of Rs. 30000/- as directed by the trial court within a period of three weeks from today and on such deposit being made, the petitioner is permitted to file written statement within the time as may be granted by the trial court.

5. The petition is thus partly allowed. Rule is made absolute in the above terms. No order as to costs.

(A.P. Deshpande, J.)